

### **REMARKS**

Applicants respectfully submit that the claims have been amended, and claims 2, 22, and 33 have been canceled without prejudice, to more clearly point out the present invention. All the claims presently on file are in condition for allowance, which allowance is earnestly solicited.

### **CLAIMS REJECTION UNDER 35 U.S.C. 103**

Claims 1-42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Krapp et al. (hereinafter "Krapp") US Patent Application No. 2002/0169934, in view of Kedem US Patent No. 6,535,994.

Applicants respectfully submit that the cited references do not disclose all the elements and limitations of the claims on file as a whole. Consequently, the claims on file are not obvious under 35 U.S.C. 103, and the allowance of these claims is earnestly solicited. The allowability of the rejected claims will now be discussed in view of representative claim 1.

Applicants agree with the Examiner that: "Krapp does not explicitly teach tracking a residue data that has not yet been emitted as a chunk although it has the same functionality of eliminating data redundancies."

In addition, the Examiner indicates that: "Krapp teaches the invention substantially as claimed, comprising: sliding a window [list of data block identifier, 0128] over the data chunks [obtaining data block; ab; 901 of fig. 9; 0125-0126]".

Applicants respectfully traverse this rejection ground and submit that **Krapp does not teach sliding a window over the data chunks**. Krapp's "list of block identifier, 0128" is not, and cannot be logically considered to be equivalent to the window that is recited in the exemplary claim 1. Rather, **the "list of block identifier, 0128" refers to a list of block identifiers** that are being remembered. Contrary to Krapp, the "window" of the present invention refers to a view of the data that is limited to a fixed size, rather than a list of remembered block identifiers of the data.

Furthermore, **Krapp does not disclose the concept of sliding a window over the data chunks** because Krapp is concerned simply with identifying whether a given unit of data is the duplicate of another. Contrary to Krapp, the present invention addresses the issue of finding duplicate data within a given unit of data by sliding a given unit of data to find duplicate data within the stream.

In summary, Krapp does not consider the present invention as a whole.

The Examiner resorts to Kedem to compensate for the missing elements of Krapp, indicating that: "E Kedem teaches tracking a residue data that has not yet been emitted [col. 18, lines 65 to col. 19, lines 47]. Moreover, Kedem also teaches dividing data into predominantly fixed-size chunks so that duplicate data chunks are identified [fixed size blocks, ab; col. 10, lines 32-36; col. 16, lines 35-45; col. 20, lines 54-55]." The Examiner further indicates that: "Krapp and Kedem teach the invention substantially as claimed. Kedem further teaches if the data within the window has been previously

seen, emitting as one or more unique chunks the residue data that has been slid over, and further emitting as a duplicate chunk the data in the window [col. 18, lines 65 to col. 19, lines 47]."

Applicants traverse these rejection grounds, and respectfully submit that Kedem does not teach tracking a residue data that has not yet been emitted as a chunk. **The "remaining data tracks"** in col 18 line 65 refer to tracks that have not yet been verified for coherency, **does not refer to data that has not yet been emitted as a chunk.**

In addition, Applicants submit that Kedem is not concerned with identifying duplicate data. Rather, it addresses the issue of verifying that data, possibly redundant, in given locations are coherent. At best, Kedem verifies that data that are in given locations and that are supposed to be identical are in fact identical. However, **Kedem does not identify duplicate data.**

As a result, Kedem does not describe the invention as a whole.

To summarize, the office action seems to dissect the elements of the claims, **without considering the invention as a whole**, particularly that, as mentioned earlier, the main reference, namely Krapp, does not consider the invention as a whole, and further that the secondary reference, Kedem, does not consider the present invention as a whole.

Consequently, Applicants respectfully submit that **none of the prior art references considers the present invention as a whole**, and the hypothetical combination of **these references will not consider the present invention as a whole**, necessitating the finding of non-compliance with the foregoing legal standard. Reference is made to the following legal authority in support of the finding of non-obviousness:

**"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.** The prior art perceived a need for mechanisms to dampen resonance, whereas the inventor eliminated the need for dampening via the one-piece gapless support structure. "Because that insight was contrary to the understandings and expectations of the art, the structure effectuating it would not have been obvious to those skilled in the art." 713 F.2d at 785, 218 USPQ at 700."

Applicants respectfully submit that the cited references **do not provide any reasonable teaching or suggestion** to support modifying the cited references to identify duplicate data chunks in a data stream by dividing the data stream into fixed-size chunks, as recited in claim 1. The Examiner indicates that "it would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to add the feature of Kedem to the system of Krapp as an essential means to **reduce the storage of duplicate data and increase the reliability in data storage and network transmission**." Emphasis added.

Applicants respectfully submit that **the general concept** of reducing the storage of duplicate data and increasing the reliability in data storage and network transmission, **lacks the necessary specificity to be considered as**

reasonable teaching or suggestion to support the modification of Krapp. The hindsight addition of the features of the secondary reference to those of the primary references, without a well founded reason to support such modification does not support a prima facie ground for a proper obviousness rejection. Consequently, the combination of Krapp and Kedem is untenable.

As a result, the hypothetical combination of the cited references cannot be used to support a finding of obviousness, as indicated by the legal authorities below:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1598 (citing *ACS Hosp. Sys. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)). What a reference teaches and whether it teaches toward or away from the claimed invention are questions of fact. See *Raytheon Co. v. Roper Corp.*, 724 F.2d 951, 960-61, 220 USPQ 592, 599-600 (Fed. Cir. 1983), cert. denied, 469 U.S. 835, 83 L. Ed. 2d 69, 105 S. Ct. 127 (1984)."

"When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references. See *In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987)." Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *MPEP* 2143.01; *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)."

Claim 1 is thus not obvious in view of the cited references, and the allowance of this claim and the claims dependent thereon, is earnestly solicited. Independent claims 21 and 32 are allowable for containing a

similar subject matter to that of claim 1. Therefore, claims 21 and 32 and the claims dependent thereon, are also allowable.

## **CONCLUSION**

All the claims presently on file in the present application are in condition for immediate allowance, and such action is respectfully requested. If it is felt for any reason that direct communication would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned at the below-listed telephone number.

Date: September 12, 2006

Samuel A. Kassatly Law Office  
20690 View Oaks Way  
San Jose, CA 95120  
Tel: (408) 323-5111  
Fax: (408) 521-0111

Respectfully submitted,

//Samuel A. Kassatly//

---

Samuel A. Kassatly  
Attorney for Applicants  
Reg. No. 32,247